PART 1 – GENERAL INFORMATION: RECORDKEEPING AND REPORTING FOR CONTROLLED SUBSTANCES

PART 1 – GENERAL INFORMATION: RECORDKEEPING AND REPORTING FOR CONTROLLED SUBSTANCES

1.1. OVERVIEW OF THE EPA STRATOSPHERIC OZONE PROTECTION PROGRAM

The U.S. Environmental Protection Agency's (EPA) Stratospheric Ozone Protection Program was originally developed in response to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), an international agreement that requires signatory nations or "Parties" (listed in Appendix A) to reduce and eventually eliminate their production and consumption[1] of ozone-depleting substances (ODS). The Stratospheric Ozone Protection Program (the Program) is designed to ensure that the United States meets its obligations to phase-out and control these substances under the Protocol and the Clean Air Act.

1.1.1. Controlled Substances

The Program defines two classes of ODS. These class I and class II substances, as well as their ozone depletion potentials (ODPs), are listed in Appendix B. These chemicals are considered to be controlled substances under the regulations, whether alone or in a mixture, if they are not in a manufactured product and are in bulk containers.[2]

All chemicals in class I, except Group VI (methyl bromide), were phased-out beginning January 1, 1996. Methyl bromide is scheduled for phaseout on January 1, 2005. In 2003, EPA added chlorobromomethane (CBM) to the list of controlled substances, creating a new Group (Group VIII) of class I substances. There were no interim phaseout levels for CBM; production and import became restricted on August 18, 2003.

Class II substances (hydrochlorofluorocarbons, or HCFCs) follow a different phaseout schedule, which began with the phaseout of HCFC-141b on January 1, 2003. (See Table 1 in Section 1.1.3 for the complete phaseout schedule for class II substances.)

Phaseout signifies a virtual elimination of production and importation of these chemicals in the United States. The detailed regulations governing the production, transfer, import, and export of controlled substances are contained in 40 CFR Part 82. The July 1, 2003 version of the regulation is available at: http://www.access.gpo.gov/nara/cfr/waisidx_03/40cfr82_03.html.

[1] "Consumption" is defined as "production plus import minus export," for the purposes of this guidance document, the CAA, and the Montreal Protocol.

[2] A bulk container is one that serves to transport the chemical and is not directly used in the application of the chemical or as part of a "use system." Iso-tanks used for transporting large volumes of chemicals are clearly bulk containers, as are 50-gallon drums and pressurized cylinders that serve only to transport the chemical. A refrigerator that has CFC-11 in its foam insulation and CFC-12 as its refrigerant is not a bulk container; rather, it is considered a product or a use system, since the refrigerator does not simply store these chemicals but uses them to refrigerate food.

1.1.2. The Phaseout Program for Class I Substances

Since January 1, 1996, there has been no production or import of class I substances (other than methyl bromide), with only limited exceptions. EPA permits the use of these substances if produced or imported before January 1, 1996 (or prior to January 1, 1994 for halons).

Although the regulations phased-out the production and consumption of class I, Group II (halons) on January 1, 1994, and all other class I controlled substances (except methyl bromide) on January 1, 1996, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. Additionally, as of August 18, 2003, there has been no production or import of CBM, the controlled substance added as Group VIII of class I substances in 2003. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed or destroyed (§82.3 and §82.4(b)). They also allow limited manufacture if the substances are either exported to countries listed under Article 5 of the Protocol (see Appendix C) or produced for essential uses as authorized by the Protocol and the regulations.

To track and monitor these exceptions to the phaseout, the Program established two types of allowances:

(1) Article 5 allowances; and
(2) essential-use allowances.

The regulations allow import of phased-out class I controlled substances provided the sources are either transformed or destroyed. Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are:

1. previously used;
2. imported for essential uses as authorized by the Protocol and the regulations; or
3. a transhipment or a heel (§82.4(d)).

Reporting and recordkeeping requirements also established by the Program are listed below. Part 2 and Part 3 of this guidance document cover the reporting and recordkeeping requirements for class I substances in more detail, but companies should refer to the actual regulation to ensure thorough compliance.

- Producers of Class I Substances - §82.13(f)(3)-(4)
- Importers of Class I Substances - §82.13(g)(4), §82.13(o-q)
- Essential Use Holders and Laboratory Suppliers - §82.13(s-x)
- Essential-use Exemption for Laboratory and Analytical Applications - §82.13(u)
- Notification of Article 5, Essential Use Allowance, or Methyl Bromide Transfers - §82.12(a)(1)
- Request for Additional Methyl Bromide Consumption Allowances -§82.10(a-c)
- Used Class I Substances – Petition to Import - §82.13(g)(2)-(3)
- Exporters of Class I Substances - §82.13(h), §82.13(f)(3)(vi)(ix)
- Second-Party Transformation and Second-Party Destruction - §82.13(k-m)
- Distributors of Methyl Bromide - §82.13(y)(4)
- Certification of Methyl Bromide Orders/Purchases - 82.13(y)(1)-(2), 82.13(z)(2))

1.1.3. The Phaseout Program for Class II Substances

Under the Protocol, the United States is obligated to limit HCFC consumption to a specific level and to reduce it in a step-wise fashion. The Parties created a schedule with graduated reductions and the eventual phaseout of the consumption of HCFCs. The first phaseout milestone was in 1996, when HCFC consumption levels were capped using the formula of 3.1 percent (reduced to 2.8 percent at the seventh meeting of the Parties) of U.S. consumption in 1989, plus U.S. consumption of HCFCs in 1989, resulting in a cap of 15,240 ODP-weighted metric tons. The Protocol schedule calls for a 35-percent reduction of the cap in 2004, followed by a 65-percent reduction in 2010, a 90-percent reduction in 2015, a 99.5-percent reduction in 2020, and complete phaseout in 2030. The United States must comply with this phaseout schedule under the Protocol.

In order to meet the January 1, 2004 milestone, EPA phased out the HCFC with the highest ODP. HCFC-141b, with the highest ODP, was therefore scheduled for production and import bans beginning January 1, 2003. Table 1 presents the phaseout schedule for all class II substances.

Table 1. U.S. Phaseout Schedule for Class II Substances

Date	Affected Substances	Restriction
Jan 1, 2003	HCFC-141b	Ban on production and consumption, except for specified exemptions.
Jan 1, 2010	HCFC-142b, HCFC-22	Ban on production and consumption of virgin chemical unless used as feedstock or refrigerant in appliances manufactured prior to Jan 1, 2010.
Jan 1, 2015	All Other HCFCs	Ban on production and consumption of virgin chemical unless used as feedstock or refrigerant in appliances manufactured prior to Jan 1, 2020.
Jan 1, 2020	HCFC-142b, HCFC-22	Ban on remaining production and consumption, except for specified exemptions.
Jan 1, 2030	All Other HCFCs	Ban on remaining production and consumption, except for specified exemptions.

Similar to the allowance system for class I ODS, EPA included consumption and production allowances to limit the production and import of class II ODS.

In this allowance system, exemptions for the manufacture and import of HCFCs are permitted for:

- either transformation or destruction;
- exports to Article 5 countries; or
- production for export following their respective phaseout dates.

To track and monitor these exceptions to the phaseout, the Program established the following allowances:

(1) production and consumption allowances;
(2) Article 5 allowances; and
(3) export production allowances.

Reporting and recordkeeping requirements also established by the Program are listed below. Part 4 of this guidance document covers the reporting and recordkeeping requirements for class II substances in more detail, but companies should refer to the actual regulation to ensure thorough compliance.

- Producers of Class II Substances - §82.24(b)(1)
- Importers of Class II Substances - §82.24(c)(1), §82.24(f))
- Exporters of Class II Substances - §82.24(d), §82.24(b)(1)(vi)
- Domestic Transfers of Allowances - §82.23
- Request for Additional Class II Consumption Allowances - §82.20(a)
- Used Class II Substances – Petition to Import - §82.24(c)(3)-(4)

1.2. GENERAL INSTRUCTIONS

This guidance document is designed to assist companies in complying with the reporting and recordkeeping requirements of the Stratospheric Ozone Protection Program. Forms and instructions for completing reports are included for class I substances, class II substances, and methyl bromide. The forms provided are *recommended formats* for submitting the required information to EPA. Companies may, however, provide the same information in another format, if desired.

This document is intended to serve only as guidance. It does not represent final Agency action, and cannot be relied upon to impose any obligation or create any enforceable rights on any party. This document in no way changes the requirements established under 40 CFR 82, Subpart A, and only supplements the explanations provided in the preambles to the rules. The most recent version of 40 CFR 82 is dated July 1, 2003. Additional guidance may be found in the following preambles to these rules:

- July 18, 2003, (68 FR 42884)
- January 21, 2003, (68 FR 2819)
- January 2, 2003, (68 FR 237)
- December 31, 2002 (67 FR 79861)
- December 27, 2002, (67 FR 79508)
- April 29, 2002, (67 FR 21129)
- February 11, 2002, (67 FR 6352)
- January 8, 2001, (66 FR 1462)
- November 28, 2000, (65 FR 70795)
- June 30, 2000, (65 FR 40524)
- October 5, 1998, (63 FR 53290)
- August 4, 1998, (63 FR 41625)
- May 10, 1995, (60 FR 24970)
- December 20, 1994, (59 FR 65478)
- December 30, 1993, (58 FR 69235)
- December 10, 1993, (58 FR 65018)
- July 30, 1992, (57 FR 33754)

The remainder of this guidance document is divided into three parts, each of which summarizes the provisions of the rule that pertain to the following controlled substances:

- Part 2 – Class I substances except methyl bromide;

- Part 3 – Methyl bromide; and
- Part 4 – Class II substances (HCFCs).

Within each part, recordkeeping and reporting requirements are discussed and instructions for completing the recommended reporting forms are provided.

1.2.1. Recordkeeping

During inspections, records are used to verify quantities reported to EPA as produced, imported, exported, transformed or destroyed. Records and copies of reports should be kept by companies for three years.

Importers and transhippers should keep records on a shipment-by-shipment basis (dated records) and producers are required to maintain records on a daily basis, although some producers may maintain records on a business week basis, adjusting daily production records to account for weekends and holidays.

1.2.2. Reporting

Quarterly and yearly reports should be sent by companies to EPA's Tracking System Program Manager, who, after an initial check, enters the data into the Tracking System, which tracks each company's expended and unexpended allowances. The Program Manager may resolve reporting discrepancies over the telephone before entering the report into the Tracking System. Once entered, a cover letter and balance statement for each company is printed and mailed by the Program Manager to acknowledge receipt of the quarterly and end-of-year reports. This statement is similar to the balance statement a person might receive from a bank. Companies should keep track of their own allowances and should check their records against balance statements they receive from EPA.

Quarterly reports for class II substances should be sent to EPA Headquarters and postmarked within 30 days after the end of the applicable reporting period. Quarterly reports for class I substances should be sent to EPA Headquarters postmarked within 45 days after the end of the applicable reporting period. The Program operates within a control period equal to one calendar year. Allowances are only usable during the specific control period (i.e., from January 1, 2004 to December 31, 2004). For further information on due dates for quarterly and yearly reports, please see Appendix D of this guidance document for a Control Period Calendar.

Companies can access hard copies of the forms by downloading the Adobe Acrobat (PDF) files off EPA's website at http://www.epa.gov/ozone/. Companies also have the option of downloading Microsoft Word files off of this site and enter information into the forms electronically; however, once completed, these forms should be printed, signed, and submitted either by mail or fax. Companies without Internet access may obtain hard copies of the forms by contacting the Ozone Hotline at 800-296-1996 or the Tracking System Program Manager at (202) 343-9192.

Reports can be submitted to EPA by hard copy or by fax, as described in more detail below:

Reporting by Hard Copy

Hard copies can either be faxed or mailed to the EPA Tracking System Program Manager (see Section 1.5 for the mailing address).

Reporting by Fax

Companies may fax reports to the Tracking System Program Manager at (202)-343-2336. If the report is faxed, a hard copy should not be sent by mail. However, a company that faxes a report should follow up with a phone call to (202)-343-9192 to ensure that EPA received all the information.

Reporting Electronically

Currently, EPA is working on the option to make the forms available electronically with special guidance on a "file naming protocol" so forms completed electronically by producers and importers can be saved with similar nomenclature for transmission to EPA by email. If reports are submitted by email, EPA assumes no responsibility for the security of the transmission of proprietary information. EPA is also pursuing technical and logistical questions about creating a secure Web-based system for direct electronic reporting of data. EPA is assessing the feasibility and efficiency of creating such a system, and will work to bring it online as soon as possible.

1.3. CONFIDENTIALITY OF INFORMATION

Information in reports submitted in compliance with the rule *may be claimed as confidential*. A company may assert a claim of confidentiality for any information it submits by clearly identifying the material as confidential. Such information will be treated in accordance with EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will only be disclosed by the means set forth in that subpart. If no claim of confidentiality accompanies a report when it is received by EPA, the report may be made available to the public by EPA without further notice to the company (40 CFR §2.203).

EPA utilizes the services of ICF Consulting to assist with the operation of the computer tracking system that stores the information submitted through the reports, and to provide technical assistance and support in evaluating the data. The contractor is the designated authorized representative of the Agency and is given information claimed to be confidential. As the authorized representative, the contractor is subject to the provisions of 42 U.S.C. §7414(c) concerning any information that is entitled to protection of trade secrets, as implemented by 40 CFR §2.301(h).

1.4. CONVERSION FACTORS – REPORTING IN KILOGRAMS

All quantities should be reported in kilograms, rounded to the nearest whole kilogram. The generally accepted conversion factor between kilograms and pounds, for the purposes of this rule, are:

$$\text{kilograms} = \text{pounds} \times 0.4536$$

For example, if an invoice states that 10,000 pounds (lbs.) of a controlled substance were exported, the amount reported to EPA should be 10,000 × 0.4536, or 4,536 kilograms (kg).

1.5. CONTACTS

Information on Federal taxes for ozone-depleting chemicals and on products containing or manufactured with these chemicals can be obtained from the Internal Revenue Service (IRS) at 202-622-3130.

The Stratospheric Ozone Protection Hotline can be contacted toll-free, at 1-800-296-1996, for documents

and other materials relevant to the accelerated phaseout and other parts of the Title VI of the Clean Air Act. Questions regarding regulatory requirements of the phaseout and the Stratospheric Ozone Protection Program should be directed to this hotline.

The Stratospheric Ozone Protection Program is under the direction of the Stratospheric Program Implementation Branch (SPIB) in the Global Programs Division (GPD) of the Office of Air and Radiation (OAR). SPIB is responsible for U.S. compliance with the Montreal Protocol and for policy issues related to the implementation of Title VI of the Clean Air Act. The Branch maintains the tracking system; monitors trades; resolves policy issues; reviews quarterly reports; and coordinates compliance monitoring.

Readers are requested to bring errors in this document to the attention of the Tracking System Program Manager. Reporting forms and written communication should be directed to:

U.S. Postal Address:
Tracking System Program Manager
Global Programs Division
U.S. EPA (6205J)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Express Mail Address
Tracking System Program Manager
Global Programs Division
U.S. EPA (6205J)
1310 L Street, NW
Washington, D.C. 20005

Readers are requested to direct petitions to import used class I substances (including used methyl bromide) and used class II substances to the attention of the Refrigerant Recycling Program Manager at:

U.S. Postal Address:
Refrigerant Recycling Program Manager
Global Programs Division
U.S. EPA (6205J)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Express Mail Address
Refrigerant Recycling Program Manager
Global Programs Division
U.S. EPA (6205J)
1310 L Street, NW
Washington, D.C. 20005

Although the Stratospheric Ozone Program is the primary point of contact, other offices at EPA that may be contacted include:

- Office of Enforcement and Compliance Assurance (OECA) - directs inspections and provides EPA Regional offices with guidelines on performing inspections of producers, importers, exporters, and transformers.

  U.S. Postal Address:
  Compliance Assessment and Media Programs Division
  Office of Compliance
  U.S. EPA
  1200 Pennsylvania Ave., NW
  Washington, D.C. 20460
  (202)-564-7047

- Office of Regulatory Enforcement (ORE) - directs and coordinates enforcement activities.

  U.S. Postal Address:
  Air Enforcement Division
  Office of Regulatory Enforcement
  U.S. EPA

1200 Pennsylvania Ave., NW
Washington, D.C. 20460
(202)-564-2817

- EPA Regional Offices - perform on-site inspections of records kept by affected companies and provide guidance on compliance with regulatory requirements.